IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2134 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BARODA MUNICIPAL CORPORATION

Versus

RAMESHCHANDRA GAURISHNKAR PANDYA

Appearance:

1. Special Civil Application No. 2134 of 1995

MR PRANAV G DESAI for Petitioner No. 1

MR RD RAVAL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 12/08/2004

ORAL JUDGEMENT

Heard learned advocate Mr.Pranav G. Desai on behalf of the petitioner and learned advocate Mr.R.D. Rawal for for respondent - workman.

2. In the present petition, the petitioner Corporation has challenged the award passed by the Labour Court, Baroda in Reference No.921 of 1986 dated 6th October, 1994, whereby the labour court has granted reinstatement with backwages on the average of salary of 12 months received by the respondent.

3. Learned advocate Mr.Desai has mainly raised two contentions. The first contention raised by the learned advocate Mr.Desai is that because of the fixed term appointment given to the workman, Section 25-F is not applicable. The second contention is that the labour court has committed an error in not considering the preceding 12 months from the date of termination and therefore, the award in question is required to be set aside. Except these two contentions aforesaid, no other contention is raised by Mr.Desai before this Court, nor the attention of this Court is drawn to any decision and authority in support of his contentions.

4. Learned advocate Mr.R.D.Rawal submitted that Section-2[oo][bb] of the Industrial Disputes Act came into force on 18th August, 1984 with no retrospective effect. Therefore, in the instant case, termination dated 30th June, 1984 and hence, Section 2[oo][bb] is not applicable and as such, any kind of termination amounts to retrenchment and Section 25-F of the I.D.Act is applicable. Mr.Rawal has also submitted that undisputedly, Section 25-F has not been followed by the petitioner Corporation. Therefore, order is ab initio void. He also submitted that for calculating 240 days, the service rendered in preceding 12 months from the date of termination is not necessary but even if in earlier year/s also, if the workman had completed 240 days continues service, that can be also be taken into account for the benefit of Section 25-F of the I.D.Act, 1947. Having facet of the aforesaid contentions, learned advocate Mr.Rawal has supported the award made by the labour court.

5. I have considered submissions made by the learned advocates for the parties. The labour court has come to the conclusion on the basis of the appointment orders and presence register produced by the Corporation and oral evidence of the Corporation vide Exh.18. The labour court has come to the conclusion that within one year period, the workman had completed 240 days continues service and that has been proved based on the documentary and oral evidence. The facts emerged on the record that the respondent workman was appointed on periodical basis.

The first appointment order dated 6th October, 1982 was for a period of two months and the second order dated 6th December, 1982 for the period from 11th January, 1983 to 30th June, 1983. Thereafter, the workman was appointed in Health Department by order dated 2nd January, 1984. From the record, it does not become clear that while transferring the workman to Health Department pursuant to order dated 2nd January, 1984, whether any further periodical order was issued by the Corporation or not. In para-8, the labour court has discussed this aspect looking to the appointment orders produced by the Corporation vide Exh.12/2. The first order was for a period of two months from 1st January, 1984 to 29th February, 1984. Thereafter, the Corporation has produced muster roll for a period from January, 1984 for that only period. Thereafter, no other muster roll for further period has been produced by the Corporation before the labour court. The labour court has observed that Corporation has not produced all the appointment orders of the workman. The labour court has also considered that looking to the appointment orders, workman remained in continuous service with the Corporation and had completed 240 days continues service. Section 25-F of the I.D.Act has not been followed by the Corporation, for that, there is no dispute raised by the Corporation before the labour court. Therefore, as a result of non compliance of Section 25-F of the Act, the order of termination becomes ab initio void as per the view taken by the Apex Court in case of MOHAN LAL v. BHARAT ELECTRONICS LTD, [1981] 3 SCC 225 : 1981 SCC [L & S] 478, wherein the Hon'ble Apex Court has held that non compliance of Section 25-F of the Act, the order of termination becomes ab initio void. The petitioner Corporation has not proved gainful employment of the workman by leading any oral evidence or by producing any documentary evidence. Obviously, Section-2[oo][bb] not having retrospective effect as per view taken by the Division Bench of this Court in case of BHARAT HEAVY ELECTRICALS LTD V. R.V. KRISHNARAO, 1989 [2] GLR pg.1. The period of 240 days can only be considered for preceding twelve months and no earlier period can be taken into account while examining the question of completion of 240 days. This aspect has been recently examined by the Apex Court in case of U.P.DRUGS AND PHARMACEUTICALS CO LTD V. RAMANUJ YADAV AND OTHERS, 2004 SCC [L & S] 46, wherein the Apex Court has held that "continuous service, if a workman has worked for more than 240 days in earlier years, then even though during the year of his retrenchment he has not worked for 240 days, he would be deemed to be in continuous service and his retrenchment would be violative of Section-6-N read

with Section 2[g] of the U.P.I.D.Act, 1947". The respondent workman appointed by letter dated 6.10.1982 and remained in service upto 30.6.84. So, for the entire period the workman was in service and worked. If preceding 12 months taken into account from the date of termination, then also, it was completed for the period from 30.6.84 to 31.5.83. Therefore, the contention raised by Mr.Desai is not accepted.

6. Therefore, in view of above observations of the Apex Court, if the workman had completed 240 days continues service in earlier year/s, that can be taken into account for considering the case, whether Section 25-F has been followed by the employer or not. In facts of the case, on both grounds, it is found that continues service of 240 days was attended by the workman. The Corporation has not proved gainful employment of the workman before the labour court. Therefore, the labour court has rightly granted full backwages on the basis of earlier working days during the period of twelve months and thus, the labour court has rightly examined this aspect and granted backwages. If the order of termination is ab initio void and the workman was not allowed to work by the employer due to illegal order and workman remained without work and wages, then, in such circumstances, the labour court should grant backwages to the workman as has been held by the Apex Court in case of HINDUSTAN TIN WORKS LTD, AIR 1979 SC 75. Therefore, considering the contentions raised by the learned advocate Mr.P.G.Desai, in view of the above observations, cannot be accepted and therefore, the award passed by the labour court is legal and valid. The labour court has not committed any error while passing the impugned award and as such, there is no illegality or irregularity committed by the labour court which requires any interference by this Court while exercising the powers under Article 227 of the Constitution of India. Therefore, there is no substance in the present petition and the same is rejected accordingly.

Rule is discharged. Interim relief, if any, stands vacated with no order as to costs.

In view of the present order, the civil application also stands rejected.

Date : 12.8.2004 [H.K.Rathod, J.]

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